IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2414 OF 2005
WITH
CRIMINAL APPLICATION NO.2415 OF 2005
WITH
CRIMINAL APPLICATION NO.2416 OF 2005
WITH
CRIMINAL APPLICATION NO.2417 OF 2005
WITH
CRIMINAL APPLICATION NO.2436 OF 2005
WITH
CRIMINAL APPLICATION NO.2437 OF 2005

Shri.H.G.Hingu and Ors. ..Applicants

Vs.

State of Maharashtra & Anr. ...Respondents

...

Mr.A.H.H.Ponda Advocate for Applicants
Mr.S.R.Shinde A.P.P.for the State in Cri. Application No.2414 of 2005
Mr.V.B.Konde Deshmukh A.P.P. for the State in Cri.Application NO. 2415 of 2005
Mr.P.S.Hingorani A.P.P. for the State in Cri.Appl.No. 2416 of 2005
Mr.Y.S.Shinde A.P.P. for the State in Cri.Appl.No. 2417 of 2005
Ms.S.V.Gajare A.P.P. for the State in Cri.Appl.No.2436 of 2005
Mr.Rajesh More A.P.P. for the State in Cri.Appl.No.2437 of 2005

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : JULY 4,2005

P.C.

1. Heard the learned advocate for the applicants and the learned A.P.P. for the State in all the matters.

2. The applicants are seeking quashing of process issued by the learned Metropolitan Magistrate, 43rd Court at Borivli Mumbai in Complaint Nos.77/S of 1999, 106/S/2001, 105/S/2001, 76/S/1999, 110/S/2000 and 16/S/2001. In the said cases, the process is issued under Sections 500 r.w.120-B r.w. 34 of IPC. The applicants have preferred applications for recall of process before the learned Magistrate. The said applications are still pending before the learned Magistrate. In view of the recent decision in the case of **Adalat Prasad Vs. Rooplal Jindal and others; 2004(4) Mh.L.J. 274,** it is clear that the Magistrate does not have the power to recall the process, hence, the applicants have approached this Court under Section 482 of Cr.P.C.

3. For the reasons recorded in my order dated 13th June, 2005 in W.P.No. 213 of 2005 and dated 21st June, 2005 in Cri.Application No.550 of 2005, in my view, it is clear that the applicants have an efficacious remedy of preferring revision against the order of Magistrate issuing process. Hence, in my view, it would be appropriate that the applicants prefer a revision before the concerned Sessions Court against the order of the Magistrate issuing process.

4. Liberty is granted to the applicants to prefer the necessary revision before the concerned Sessions Court. The learned advocate for the applicants states that the necessary revision will be preferred within a period of four weeks from today. In view of this statement, the trial Court shall not proceed with the trial for a period of four weeks from today. Looking to the fact that the applicants applications have been pending before the learned Magistrate since 8.6.2000, the learned Sessions Judge shall take a sympathetic view as far as delay is concerned in filing

revision.

5. On the necessary revision being preferred by the applicant before the concerned Sessions Court, the concerned Sessions Court shall dispose of the matter on merits after hearing the necessary parties. On merits, all contentions of both the parties, are left open.

6. Criminal Applications are disposed of.

[V.K.TAHILRAMANI,J.]